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10 Attorneys for Plaintiff Cisco Systems, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

20 CISCO SYSTEMS, INC.,
21 Plaintiff,
22 vs.
23 ARISTA NETWORKS, INC.
24 Defendant.

CASE NO. 5:14-cv-5344-BLF

**CISCO'S OPPOSITION TO ARISTA'S
MOTION FOR LEAVE TO FILE A
REPLY IN SUPPORT OF ITS MOTION
FOR RELIEF FROM THE
MAGISTRATE JUDGE'S NON-
DISPOSITIVE PRETRIAL ORDER**

Judge: Hon. Beth Labson Freeman

1 Plaintiff Cisco Systems, Inc. (“Cisco”) respectfully opposes Defendant Arista Networks,
 2 Inc.’s (“Arista”) Motion for Leave To File A Reply In Support of Its Motion For Relief From The
 3 Magistrate Judge’s Non-Dispositive Pretrial Order (“Motion For Leave”). Arista has not carried
 4 its burden under Civil L.R. 7-9. Arista raises no “new,” material facts that were not already in its
 5 possession before, during, and after it briefed and argued its Motion to Strike. Arista also presents
 6 facts that were already presented to and considered by the Magistrate in briefing and at oral
 7 argument. Arista should not be permitted to file more briefing about facts Arista has possessed all
 8 along and additional arguments it had already presented or certainly could have presented before
 9 the Magistrate. *See Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
 10 880 (9th Cir. 2009) (“A motion for reconsideration may not be used to raise arguments or present
 11 evidence for the first time when they could reasonably have been raised earlier in the litigation.”)
 12 (internal quotation marks and citation omitted). For this reason, Arista’s Motion for Leave should
 13 be denied.

14 Moreover, Arista’s allegations concerning versions miss the mark. This discovery dispute
 15 is about comparing help descriptions on Arista-produced switches to Arista-produced source code
 16 in order to confirm that those elements came from Arista as opposed to some third party. And that
 17 is important because Arista allows and encourages users to customize its EOS source code
 18 including the code underlying the EOS CLI. Arista, in fact, permits users to modify the
 19 commands and outputs, including help descriptions. Accordingly, Cisco needed Arista’s source
 20 code and Arista-produced switches from discovery in the case in order to confirm that Arista was
 21 the party that copied Cisco’s help descriptions into EOS, as opposed to some third party. Without
 22 both, Cisco could not have determined that Arista was the party that copied Cisco’s copyrighted
 23 works in this fashion. That confirmation was particularly important here where Arista
 24 affirmatively represented in this case that it had copied absolutely nothing from Cisco into its
 25 source code.

26 Cisco respectfully requests that the Court deny Arista’s Motion for Leave. Nevertheless, if
 27 the Court is inclined to grant Arista’s Motion for Leave to file a reply, Cisco respectfully requests
 28 permission to file a responsive brief by Noon Pacific Time on Monday August 22, 2016.

1 Dated: August 19, 2016

Respectfully submitted,

2 /s/ John Neukom

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